

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Emma Stydahr	Team: Squad #13	CCRB Case #: 202003973	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 06/05/2020 10:00 PM	Location of Incident: Nostrand Avenue between Carroll Street and Crown Street	Precinct: 71	18 Mo. SOL 12/5/2021	EO SOL 5/4/2022	
Date/Time CV Reported Fri, 06/05/2020 4:08 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 06/05/2020 4:08 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. An officer			
3. POM Joseph Nicoletti	10711	961004	071 DET

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Frank Beers	17641	945498	071 PCT
2. POM Jason Schreckenstein	01340	956247	071 PCT
3. SGT Michael Casale	5210	948755	006 PCT
4. SGT John Kenny	05559	950674	071 PCT
5. James Hepworth		923441	
6. LT Daniel Guida	00000	941862	071 PCT
7. DI Ludwig Romero	00000	926355	071 PCT

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Abuse: Officers threatened to arrest § 87(2)(b)	
B. Officers	Abuse: Officers threatened to arrest individuals.	
C. Officers	Abuse: Officers threatened individuals with the use of force.	
D. Officers	Force: Officers struck individuals with batons.	
E. POM Joseph Nicoletti	Force: Police Officer Joseph Nicoletti struck § 87(2)(b) with a baton.	

Officer(s)	Allegation	Investigator Recommendation
F. Officers	Abuse: Officers did not obtain medical treatment for § 87(2)(b)	
G. An officer	Force: An officer struck an individual with a vehicle.	
§ 87(2)(b)	§ 87(4-b), § 87(2)(g)	

Case Summary

On June 15, 2020, § 87(2)(b) was called § 87(2)(b). During that phone call, he filed this complaint on behalf of an unknown individual, identified via investigation as § 87(2)(b). On June 16, 2020, § 87(2)(b) filed a duplicate complaint with the CCRB via email. This case was deemed sensitive due to video footage of this incident § 87(2)(b) (Board Review 01).

On June 5, 2020, at approximately 10:00pm, two hours after the Mayor's curfew went into effect, protesters were marching in the street on Nostrand Avenue between Carroll Street and Crown Street in Brooklyn, during a Black Lives Matter protest/march. Unidentified officers ordered the crowd of protesters, including § 87(2)(b) to get on the sidewalk or be arrested, swung their batons at protesters, and pushed protesters with their batons from the street toward the sidewalk (**Allegation A-D, Abuse of Authority:** § 87(2)(g) Police Officer Joseph Nicoletti of the 71st Precinct approached § 87(2)(b) from behind and shoved him with his baton, causing § 87(2)(b) to lose his balance and fall off of his Citi Bike onto the street (**Allegation E, Force:** § 87(2)(g). § 87(2)(b) stood up, approached an unidentified officer, and asked her to call an ambulance for him. Another unidentified officer told the first not to call the ambulance, and the first unidentified officer told § 87(2)(b) no and walked away (**Allegation F, Abuse of Authority:** § 87(2)(g) § 87(2)(b) called 911 and requested an ambulance for himself. Once it arrived and § 87(2)(b) was seated inside, but prior to the ambulance leaving the scene, § 87(2)(b) saw through the ambulance back door window a grey unmarked police vehicle strike an unidentified man with its door, causing the man to fall to the ground (**Allegation G, Force:** § 87(2)(g). § 87(4-b), § 87(2)(g)

§ 87(2)(b) was issued a summons for violating the Mayor's Curfew (**Board Review 02**). § 87(2)(b)

The Body Worn Camera ("BWC") and Technical Assistance Response Unit ("TARU") footage requests for this incident were returned with footage that took place after the point in time of the FADO allegations. The BWC footage is in IA #89 (**Board Review 04**), the TARU footage is in IA #416 (**Board Review 05**), and the video summaries are in IA #93 and IA #417, respectively (**Board Review 06, 07**). Cell phone videos of this incident provided by § 87(2)(b) and obtained by the investigation § 87(2)(b)

Allegation (A) Abuse of Authority: Officers threatened to arrest § 87(2)(b)
Allegation (B) Abuse of Authority: Officers threatened to arrest individuals.
Allegation (C) Abuse of Authority: Officers threatened individuals with the use of force.
Allegation (D) Force: Officers struck individuals with batons.
Allegation (F) Abuse of Authority: Officers did not obtain medical treatment for § 87(2)(b)

Known facts and general descriptions:

§ 87(2)(b) (**Board Review 11**) said he was riding a Citi Bike home from his job delivering food when he inadvertently merged with a protest marching on Nostrand Avenue. § 87(2)(b) who was riding his Citi Bike in the street, was not participating in the march and was merely headed in the same direction as the protesters, though many of the protesters were marching in the street beside him. He believed himself to be an essential worker and therefore exempt from the Mayor's

Curfew. When he reached Nostrand Avenue between Carroll Street and Crown Street, he observed that officers had blocked the protesters in the street from continuing down Nostrand Avenue. § 87(2)(b) asked an unidentified officer if he could pass by in the street. The officer said no and ordered him to get on the sidewalk. § 87(2)(b) said there were too many people for him to ride his bicycle on the sidewalk safely.

Multiple officers who § 87(2)(b) could not describe began screaming at protesters, “Move back” and “Get on the sidewalk or you will be arrested” while swinging their batons and using their batons to push protesters from the street onto the sidewalk. § 87(2)(b) could not identify or describe which civilians the unidentified officers struck with their batons or which parts of the civilians’ bodies their batons made contact with.

During the protest, § 87(2)(b) was pushed to the ground by an officer (see Allegation E), and as a result, he hit his head on the pavement, causing him to feel pain and experience dizziness. A few minutes later, he approached an unidentified black female officer and asked if she could call an ambulance for him because he had just been pushed by an officer. The unidentified female officer picked up her radio, but before she spoke into it, an unidentified white male officer wearing a uniform with a white shirt told her, “If you call an ambulance, you’ll be in trouble.” The unidentified black female officer told § 87(2)(b) “I can’t call an ambulance at the moment,” and walked away. § 87(2)(b) could not describe these officers in any further detail.

§ 87(2)(b) (**Board Review 12, 13**), who identified himself as a participant in the protest, did not describe any of these aspects of the incident in his CCRB interview, and he was unresponsive to subsequent contact attempts for more information (see IAs for contact attempts). § 87(2)(b) (**Board Review 14**), who identified himself as a participant in the protest, did not recall witnessing any of these aspects of the incident. § 87(2)(b) said he and a few other protesters approached to assist § 87(2)(b) a few minutes after he was pushed, and that § 87(2)(b) was on the phone with 911. § 87(2)(b) (**Board Review 15**), a journalist who said she was present reporting on the protest, denied witnessing these interactions. Based on their testimonies, all of these individuals were near the incident location at the time these interactions are alleged to have occurred, except for § 87(2)(b) who did not stop marching after § 87(2)(b) was pushed and therefore would not have witnessed § 87(2)(b) request medical attention from the unidentified female officer.

Video Evidence:

Four BWC footage requests were submitted for this case which yielded 10 BWC videos. The first request included the date, time, and location of the incident. The second, third, and fourth requests additionally listed specific officers who were identified as being present based on video evidence obtained from § 87(2)(b) and social media. The third request also included the number of the summons § 87(2)(b) received on the incident date for violating the Mayor’s Curfew, and the fourth request included the job number associated with an Event associated with § 87(2)(b) s 911 call. The NYPD Legal Bureau’s listed search criteria for these requests included the date and time of the incident within the precinct of occurrence, and from officers of the 71st Precinct, 77th Precinct, 78th Precinct, 84th Precinct, Strategic Response Group, Emergency Service Unit, Critical Response Command, Disorder Control Unit, City-Wide Traffic Taskforce, and Narcotics.

The first BWC request yielded nine videos and the third BWC request yielded one video. The second and fourth requests were returned negative. A TARU request yielded 11 videos. All of the BWC and TARU footage received captures footage related to arrests which were affected at the end of the protest after the point in time of the FADO allegations involved in this case (**Board Review 04, 05**).

The cell phone videos of this incident provided by § 87(2)(b) and obtained by the investigation § 87(2)(b) capture parts of the protest during the timeframe the alleged FADOs occurred, though they do not capture the timeframe or the protest in its entirety. These cell phone videos do not capture any of the interactions § 87(2)(b) described (**Board Review 01, 08, 09**).

NYPD Documents Reviewed:

As discussed above, § 87(2)(b) was unable to describe any of the additional victims in this case and none of them were detained, arrested, or summonsed in § 87(2)(b)'s presence. He was also unable to identify or describe any of the officers who allegedly threatened to arrest protesters and struck them with batons, and none of the witnesses saw these interactions nor were they captured in the video evidence.

A search of the NYPD's Booking and Arraignment Disposition System (BADs) revealed no arrests stemming from this incident (**Board Review 17**). The 71st Precinct summons log revealed that 40 summonses were issued at this protest, all for violating the Mayor's curfew, but all but one listed the incident location as approximately one block away from this incident location and approximately 15 minutes later. The only summons issued for the incident location and approximate time of this incident was the summons issued to § 87(2)(b) (**Board Review 21**). Requests for all AIDED Reports and Stop Reports generated for civilians at the incident location around the time of this incident were returned negative (**Board Review 18, 19**). A request for Threat, Resistance, and Injury (TRI) Reports generated at the incident location around the time of this incident yielded two documents: the first was generated for § 87(2)(b) and the second was prepared for an unidentified civilian who was arrested approximately 20 minutes after and approximately one block away from where § 87(2)(b) stated the allegations occurred. During the course of that arrest, force, including wrestling and grappling are documented to have occurred, which are actions inconsistent with what § 87(2)(b) said he witnessed (**Board Review 20**). Finally, a request for the Detail Roster associated with this protest was returned negative (**Board Review 16**), and during his CCRB interview, Deputy Inspector Ludwig Romero of the 71st Precinct said one was not prepared because this was a spontaneous protest as opposed to a planned event.

Concurrent Investigations:

No concurrent investigations were pursued related to this complaint.

Ranking Officers:

Deputy Inspector Romero (**Board Review 22**) was identified as the highest-ranking officer at this protest and he acknowledged being in charge. During his CCRB interview, he denied participating in or witnessing officers threatening to arrest protesters, waving their batons at protesters, and pushing protesters from the street toward the sidewalk. He gave no orders for any officers to take any of these actions and was unaware of any other supervisors giving such orders at this protest. Deputy Inspector Romero testified that no civilian requested medical attention from him. He did not refuse to obtain medical treatment for any civilian, nor did he tell any officer, "If you call an ambulance, you'll be in trouble."

Officers Interviewed:

Police Officer Joseph Nicoletti, Police Officer Jason Schreckenstein, and Lieutenant Daniel Guida, all of the 71st Precinct, were interviewed (**Board Review 23, 24, 25**), and they all denied witnessing officers threaten to arrest any protesters. PO Nicoletti was unsure if any officers used their batons to push protesters from the street toward the sidewalk, and PO Schreckenstein and Lieutenant Guida were not aware of this happening. PO Schreckenstein and Lieutenant Guida did not know if officers

swung their batons at any protesters. PO Nicoletti, PO Schreckenstein, and Lieutenant Guida all denied witnessing any officer refuse to obtain medical treatment for any protester. All officers interviewed denied participating in all of these actions themselves. They all said that officers from multiple commands were present during this protest, though they could not identify which commands, aside from their own, these officers were assigned.

Allegation Recitation and Disposition:

Due to § 87(2)(b)'s inability to describe any of the victims or officers involved in these aspects of the incident, none of the obtained video evidence capturing these allegations, none of the civilian witnesses recalling these aspects of the incident, no NYPD documentation of these interactions, and none of the officers interviewed acknowledging participating in or witnessing these alleged interactions, § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (E) Force: Police Officer Joseph Nicoletti struck § 87(2)(b) with a baton.

§ 87(2)(b) said that within about 10 seconds of officers yelling "Move back" and "Get on the sidewalk or you will be arrested," PO Nicoletti, identified via investigation, approached him from behind and pushed him on the back on his right arm with a baton, which caused § 87(2)(b) to fall off of his stationary Citi Bike and onto the ground. § 87(2)(b)'s head and elbow hit the pavement, causing contusions and dizziness.

§ 87(2)(b) His medical records document contusions on his face, right shoulder, right elbow, and right knee. § 87(2)(b)

§ 87(2)(b)

Cell phone video § 87(2)(b) captures PO Nicoletti approaching § 87(2)(b) from behind at the 02:23 minute mark of the media player timestamp (visible at the bottom of the screen). PO Nicoletti is holding his baton in his right hand. § 87(2)(b) is in the bus lane of the street straddling his stationary Citi Bike. A large crowd of protesters and officers spans from the sidewalk into the street. There is a stationary unmarked police vehicle in the left lane, though § 87(2)(b) is not blocking the vehicle's path forward. PO Nicoletti immediately places his right hand, still holding his baton, on § 87(2)(b)'s lower torso. PO Nicoletti says "Sidewalk, sidewalk, sir, sidewalk." At 02:25, § 87(2)(b) takes a step to the side, as if he is losing his balance, while PO Nicoletti's hand remains on his lower back. At 02:26, PO Nicoletti extends both arms while still holding his baton, and shoves § 87(2)(b) to the ground. The crowd of protesters begin yelling "Leave him alone!," "No violence!," and "Hey, hey, hey!"

§ 87(2)(b)s, § 87(2)(b)s, and § 87(2)(b)s statements were generally consistent with the cell phone video, though § 87(2)(b) testified that § 87(2)(b) did not fall, rather, his body wobbled as a result of being pushed.

PO Nicoletti said he first noticed § 87(2)(b) stationary on his Citi Bike, blocking traffic near Nostrand Avenue and Crown Street. PO Nicoletti did not remember if he spoke to or gave any orders to § 87(2)(b). Approximately one or two minutes after PO Nicoletti noticed § 87(2)(b) was blocking traffic, while PO Nicoletti was holding his baton with both hands, PO Nicoletti attempted to "guide" § 87(2)(b) out of the way of traffic by touching his baton to § 87(2)(b)'s body (though PO Nicoletti could not remember where on his body) and extending his

arms. PO Nicoletti denied “pushing” § 87(2)(b). The only reason PO Nicoletti made physical contact with § 87(2)(b) was to guide him out of the path of traffic. Because this was a spontaneous protest/march, PO Nicoletti was not provided with any orders regarding the use of force against protesters.

PO Schreckenstein, Lieutenant Guida, and Deputy Inspector Romero denied witnessing this aspect of the incident.

Members of service will use only the reasonable force necessary to gain control or custody of a subject. In determining whether the use of force is reasonable, members of service should consider the following: 1) The nature and severity of the crime being committed; 2) Actions taken by the subject; 3) Duration of the action; 4) The immediacy of the perceived threat; and 5) Whether the subject is actively resisting. NYPD Patrol Guide, Procedure 221-01 (**Board Review 27**). The goal is to gain voluntary compliance of the subject, and when appropriate and consistent with personal safety, to reduce or eliminate the necessity to use force. NYPD Patrol Guide, Procedure 221-02 (**Board Review 28**).

§ 87(2)(g) The video evidence depicts § 87(2)(b) positioned on his Citi Bike, in the bus lane of the street, not himself blocking traffic or posing any immediate danger of causing a vehicle collision, evidenced by the fact that there was only one vehicle in the immediate vicinity, a police vehicle, which was stopped and not in the same lane as § 87(2)(b) at the time PO Nicoletti pushed him. Though PO Nicoletti did first order § 87(2)(b) to move onto the sidewalk, he did not give § 87(2)(b) time to voluntarily comply; PO Nicoletti pushed him within three seconds of approaching and issuing that order. § 87(2)(g)

Allegation (G) Force: An officer struck § 87(2)(b) with a vehicle.

§ 87(2)(b) said after the unidentified black female officer refused to call him an ambulance (see Allegation F), he called 911 and requested one himself. Once it arrived, he was escorted inside to be examined by EMTs. While inside the ambulance, which was parked on Nostrand Avenue between Carroll Street and Crown Street, and while being assessed by EMTs, through the rear window of the closed ambulance doors, § 87(2)(b) saw a grey unmarked police vehicle speeding down Nostrand Avenue with its turret lights activated. There was an unidentified male civilian standing in the bus lane behind the ambulance. The police car slowed as it approached the man and the turret lights went off. The man was yelling unintelligibly and took a step towards the police vehicle as it approached his direction. The man was not blocking the unmarked police vehicle’s path. § 87(2)(b) did not hear the man be issued any orders.

While moving fast, but at a speed of less than 25 miles per hour, an officer opened the front passenger door of the unmarked police vehicle, and the door struck the man on the front of his body, causing the man to fall onto the street. The man did not get up and the police vehicle did not stop. § 87(2)(b) did not see the officers who were inside the police vehicle. There were approximately less than 10 civilians and officers, whom § 87(2)(b) could not describe, who were also standing in the bus lane at the time of the collision, but no one else was hit. § 87(2)(b) heard people say, “Look at that.” The EMT who was in the back of the ambulance with § 87(2)(b) witnessed the collision and said, “That’s crazy,” though the EMT did not say or do anything else in regards to the man who was struck by the police vehicle. The ambulance then drove away behind the car that struck the man. The EMT at the front of the ambulance did not witness the collision.

§ 87(2)(b) and § 87(2)(b) denied witnessing a police vehicle strike a civilian. § 87(2)(b) did not mention witnessing this happen during his CCRB interview and he was unresponsive to contact attempts for additional information.

EMTs § 87(2)(b) and § 87(2)(b) (**Board Review 29, 30**) of the New York City Fire Department were identified as the EMTs who transported § 87(2)(b) to the hospital. Both EMT § 87(2)(b) and EMT § 87(2)(b) testified that EMT § 87(2)(b) was operating the ambulance and that EMT § 87(2)(b) tended to § 87(2)(b) in the back of the ambulance. Neither EMT § 87(2)(b) nor EMT § 87(2)(b) saw a police vehicle strike anyone, nor did they recall § 87(2)(b) saying anything about a police vehicle striking anyone.

PO Nicoletti, PO Schreckenstein, Lieutenant Guida, and Deputy Inspector Romero all denied participating in or witnessing this aspect of the incident.

The BWC, TARU, and cell phone footage received by the investigation does not capture the location or point in time when this allegation was said to have occurred. No Event was generated at the incident location regarding a civilian being struck by a vehicle, nor was there any mention of this incident on the radio communications CD (**Board Review 31, 32, 33**). NYPD document requests for an Unusual Occurrence Report, a City Involved Accident Report, a Collision Report, and a Motor Vehicle Accident Report (MV104) for a vehicle collision at the incident location were all returned negative (**Board Review 34, 35**).

EMT § 87(2)(b) and EMT § 87(2)(b) both recalled and provided detailed descriptions of this incident, but both denied witnessing anyone get struck by a vehicle. § 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- § 87(2)(b) [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- § 87(2)(b) [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- PO Nicoletti has been a member of the NYPD for four years and has been named as a subject in four additional complaints comprised of eight allegations, one of which was substantiated.
 - In CCRB case # 201900799, an allegation of failure to provide a Right to Know Act business card was substantiated. The CCRB recommended instructions and the NYPD imposed instructions.
 - In CCRB case # 201905345, an allegation of force was substantiated. The CCRB recommended formalized training and the NYPD imposed formalized training.
 - § 87(2)(b) [REDACTED]

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- As of March 4, 2021, neither § 87(2)(b) [REDACTED] nor § 87(2)(b) [REDACTED] has filed a Notice of Claim with the NYC Comptroller's Office regarding this incident (**Board Review 41, 42, and 43**).
- According to the Office of Court Administration (OCA), neither § 87(2)(b) [REDACTED] nor § 87(2)(b) [REDACTED] has any history of criminal convictions in NYC (**Board Review 44, 45, and 46**).

Squad No.: 13

Investigator: Inv. Emma Stydahar Inv. Emma Stydahar 04/28/2021
Signature Print Title & Name Date

Squad Leader: IM Laura Kastner IM Laura Kastner 04/29/2021
Signature Print Title & Name Date

Reviewer: _____

Signature Print Title & Name Date